

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Andrew Butler

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v.

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Docket No. 18-cv-336-JL

New Hampshire State Prison

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Warden and Deborah Robinson

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MOTION TO DISMISS

The defendants, the New Hampshire State Prison Warden and Deborah Robinson, by and through counsel, the New Hampshire Office of the Attorney General, hereby move to dismiss the “petition for writ of habeas corpus” filed with this court (Doc #1) and in support thereof state the following:

1. Petitioner, Andrew Butler, an individual committed to the New Hampshire Hospital pursuant to RSA 135-C for a period of two years, brings this petition for writ of habeas corpus contending he is being illegally held in the Secure Psychiatric Unit (SPU) after being transferred to SPU pursuant to RSA 622:45.

2. This court (*Johnstone*, M.J.), per Order dated May 2, 2018, found the petition sufficient to survive preliminary review and ordered an answer or other response to be filed.

3. The defendants now ask this court to dismiss the petition because: (1) the court lacks jurisdiction to adjudicate this claim; (2) the petitioner has no standing; and (3) the Eleventh Amendment to the United States Constitution bars this action.

4. A memorandum of law accompanies this motion. The memorandum and its exhibits are being filed under seal.

WHEREFORE, the defendants respectfully request that this Honorable Court:

- A. Grant this motion;
- B. Dismiss the petition for writ of habeas corpus; and
- C. Grant such other and further relief as is just and equitable.

Respectfully submitted,

NEW HAMPSHIRE STATE PRISON
WARDEN AND DEBORAH
ROBINSON

by,

GORDON J. MACDONALD
Attorney General

/s/Lynmarie C. Cusack
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Certificate of Service

I hereby certify that a copy of the foregoing was served via the Court's CM/ECF system this 17th day of May 2018 to:

Sandra Bloomenthal, Esq.
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/s/ Lynmarie C. Cusack
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